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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,304	08/09/2002	Thomas T. Allgeuer	ADVA:005	9486

7590 05/27/2004
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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT PAPER NUMBER

1772

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,304

Applicant(s)

ALLGEUER ET AL

Examiner

Patricia L. Nordmeyer.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 32-34 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Withdrawn Rejection

1. The 35 U.S.C. 112 rejection of claims 1, 20, 22, 27, 35 – 45 and 47 is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.
2. The 35 U.S.C. 102 rejection of claims 1 – 6, 10, 11, 20 – 22, 27, 30, 35, 38, 39, 42, 44 and 45 as anticipated by Watanabe is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.
3. The 35 U.S.C. 103 rejection of claims 1 – 6, 10, 11, 20 – 22, 27, 30, 35, 38, 39, 42, 44 and 45 over Watanabe is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.
4. The 35 U.S.C. 103 rejection of claims 7, 9 and 19 over Watanabe in view of Hemming is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.
5. The 35 U.S.C. 103 rejection of claims 8, 13 and 16 over Watanabe in view of Strobel is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.
6. The 35 U.S.C. 103 rejection of claims 12 and 26 over Watanabe in view of Jones is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

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7. The 35 U.S.C. 103 rejection of claims 14, 15 and 36 over Watanabe in view of Watanabe is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

8. The 35 U.S.C. 103 rejection of claims 17, 24, 25 and 46 over Watanabe in view of Quacquarella et al. is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

9. The 35 U.S.C. 103 rejection of claim 18 over Watanabe in view of Fakuda et al. is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

10. The 35 U.S.C. 103 rejection of claim 28 over Watanabe in view of Hamlin et al. is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

11. The 35 U.S.C. 103 rejection of claim 29 is over Watanabe in view of Reuben is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

12. The 35 U.S.C. 103 rejection of claim 31 is over Watanabe in view of Nagura et al. is withdrawn due to Applicant's amendments and arguments in the paper dated April 9, 2004.

New Rejections

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1 – 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 – 22 of copending Application No. 10/031,302. Application No. 10/031,302 is currently under allowed status but pending issue. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of Applicant 10/031,302 are broad enough to encompass or include which is recited in the present patent application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allgeuer et al. discloses a profile or molding, which encompasses films and sheets, which as a surface microstructure on a thermoplastic polymer material having fringes having crater-like peaks with 25 % of the volume at the top of the peaks being empty at a height of 40 microns (Claim 1). The height of the fringes range from 40 microns to 1 millimeter (Claim 3), a hollowness index of 100 or lower (Claim 5), an aspect ratio of at least 1 (Claim 6) and a hollow diameter ratio of 1 or lower (Claim 4). Cured, irradiated or cross-linked material is used to make the article that is covered by microstructures on all sides (Claims 7 and 8) and that is multi-layer

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or mono-layer film (Claims 9 and 10) having a layer made with foam or elastic laminated on it (Claims 11 and 12). The article is water repellant (Claim 19) and is printed or imprinted (Claim 13). A post treatment step selected from treatment with an abrading device, corona treatment, curing, irradiation and cross-linking is done to the surface microstructures (Claim 14). The article is formed into a glove (Claim 17) with a soft touch (Claim 18), anti-skid properties (Claim 20), heat resistant (Claim 22) and enhanced carry, capturing and storing properties (Claim 21).

Response to Arguments

15. Applicant's arguments with respect to claims 1 – 31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
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pln

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

5/24/04